

REMARKS

By the present paper, claims 30, 32, 33, and 34 are amended and no claims are cancelled. Claims 15 - 18, 20 - 25, and 30 - 35 are in the Application and under examination.

A Terminal Disclaimer is also filed herewith

Entry of the claim amendments, entry of the Terminal Disclaimer, and reconsideration of the Application are respectfully requested.

The Claim Amendments:

Claims 30 and 32 are re-written in independent form, to correct informalities, and to remove “at least” language that allegedly lacks written description.

The Office adopts a hyperformalistic literalist reading of the specification; parsing the words of the specification as a court might construe claims, not as the skilled artisan would read the specification. The specification, written to the skilled artisan, describes and enables the invention. It does not define the meets and bounds of legal protection sought. The skilled artisan would understand that the pressures used in both “sequential” and “one pot - one shot” homogenization would be similar. The skilled artisan would recognize that Applicants were in possession of “sequential” and “one pot - one shot” methods conducted under similar conditions.

Without acquiescing to the grounds of the rejection and solely to advance prosecution of the Application, Applicants amend claims 30 and 32 as independent claims drawn to what the Office considers to be different embodiments. The Office tacitly acknowledges support for the amendments at page 2, last paragraph, of the Office Action.

Other claim amendments are consistent with recommendations made in the Office Action.

Claim Rejections Under 35 U.S.C. § 112, paragraph first:

Claims 30, 32, and 33 were rejected under 35 U.S.C. § 112, ¶1, because, it is alleged, the specification only describes pressures of 500 bar or 500 to 1200 bar. As discussed above, Applicants do not acquiesce to the grounds for the rejection. However, Applicants now present independent claims to separate embodiments and replace “at least 500” bar with -- 500 bar -- in claims to embodiments for which higher pressures are allegedly not described. Applicants respectfully submit that the present amendments remove any grounds for the rejection that may have existed.

Claims 32 - 34 were rejected under 35 U.S.C. § 112, ¶1, because claim 32 is alleged to be an improper dependent claim. Applicants do not agree, but presentation of claim 32 as an independent claim obviates the rejection.

Claim Rejections for Provisional Double Patenting:

Claims 15 -18 were provisionally rejected for obviousness-type double patenting over claims 1, 2, 4 - 18, and 25 - 44 of commonly-owned copending application 10/888,189. The contemporaneously filed Terminal Disclaimer renders to rejection moot.

The fee of \$140 for the Terminal Disclaimer is paid herewith by credit card. Form PTO Form 2038 accompanies this paper.

Conclusion:

Based on the forgoing amendments and remarks, Applicants respectfully submit that the claims are now in condition for allowance, which allowance is earnestly solicited. If, in the opinion of the Examiner, a telephone conference would advance prosecution of the application, the Examiner is invited to telephone the undersigned attorneys.

Applicants respectfully submit that no fee other than the Terminal Disclaimer fee is due with this paper. If in fact an additional fee is due, or Form 2038 is missing or cannot be processed, the Commissioner is hereby authorized to debit Deposit Account No. 10-1250 for any fees due.

Respectfully submitted,

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